The statement of facts shows that the damages, direct and indirect, to the steamer were $2500, and this sum the appellee tenders itself ready to pay. There was no error, therefore, in refusing to grant the appellant's prayers, and the judgment below must be affirmed. Judgment affirmed.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF ILLINOIS.[2]
SUPREME COURT OF IOWA.[3]
SUPREME COURT OF MICHIGAN.[4]
SUPREME COURT OF MISSOURI.[5]
SUPREME COURT OF NEW JERSEY.[6]

ACTION.

Evidence—Void Note—Recovery of Consideration.—Where a promissory note has been rendered void by a material alteration, made without fraudulent intent, the payee may recover upon the original consideration, and may establish the indebtedness as though no note had been executed therefor, by any evidence he may have, either written or oral, which has not been vitiated by the alteration: *Morrison Bros.* v. *Huggins and Harris*, 53 Iowa.

ASSUMPSIT.

On Waiver of Tort.—Where mortgaged goods have been converted and sold, the mortgagee cannot bring assumpsit for the amount received: *Carpenter* v. *Graham*, 42 Mich.

ATTORNEY.

Costs when Attorney is Party.—Where an attorney is a party to an action, and obtains a judgment in his favor, he is entitled to the same taxable costs as if he had conducted the action as attorney for some other person: *State, Drake, Prosecutrix*, v. *Berry*, 13 Vroom.

Liability, for abuse of Civil Process.—While an attorney-at-law acts merely in the character of attorney, making use of the process of the

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[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1880. The cases will probably be reported in 12 Otto.

[2] From Hon. N. L. Freeman, Reporter; to appear in 97 Illinois Reports.

[3] From Hon. John S. Runnells, Reporter; to appear in 53 Iowa Reports.

[4] From Henry A. Chaney, Esq., Reporter; to appear in 42 Mich. Reports.

[5] From T. K. Skinker, Esq., Reporter; to appear in 71 Mo. Reports.

[6] From G. D. W. Vroom, Esq., Reporter; to appear in vol. 13 of his Reports.

law to enforce his client's demand, however groundless and vexatious it may be, he is not liable to suit. But when he steps beyond that, and actively aids his client in the execution of his purpose, he is not shielded from responsibility: *Schalk* v. *Kingsley*, 13 Vroom.

Attorney's Lien—Effect of—Judgment.—Where an attorney had given notice of his claim to a lien upon the money due on a judgment obtained in favor of his client, it was *held*, that the court properly overruled a motion to set aside the judgment, based upon a stipulation between the client and the adverse party: *Brainard and Johnson* v. *Elwood*, 53 Iowa.

Confession of Judgment—Whether Power of Attorney authorizes it in Vacation.—Where a power of attorney authorizes any attorney-at-law to appear before any court of record in the state, and confess judgment for the amount due upon a note to which it is attached, the power may be exercised by the confession of judgment, either in term time or in vacation, before the clerk of the court: *Keith* v. *Kellogg*, 97 Ills.

The power to confess a judgment must be clearly given and strictly pursued or the judgment will not be sustained. But this rule, like all others, has its reasonable limitations, and must not be applied so rigidly as to defeat the manifest intention of the parties to the instrument granting the power: *Id.*

Where a power of attorney authorizes a thing to be done generally, without any limitation as to the manner of doing it, and it may be lawfully done in two or more ways, the donee of such power may execute it in either of the ways, and it will be well executed: *Id.*

BILLS AND NOTES. See *Action.*

Endorsement—Whether Restrictive, as affecting the Negotiability of a Bill or Note.—Right of Holder filling blank Endorsement to erase the same and make Note payable to himself.—As the negotiability of a bill or note can only be restricted by express restrictive words, the words "or order" need not be inserted in full, or any endorsement, to give the bill or note a subsequent negotiable quality. A direction to pay to a particular person does not necessarily import that it shall not be paid to any other person to whom he may endorse it, but only that it shall not pass without his endorsement: *Fawsett* v. *National Life Ins. Co.*, 97 Ills.

The payee of a note, endorsed the same in blank, and delivered it to an insurance company in which he was a stockholder, which company transferred the same to one H., who filled up the blank, making the note payable to a bank for collection, on his account, and sent the same to the bank for collection, and the bank, on failing to collect the note, returned it to H. endorsed "without recourse on us," signed by the cashier: *Held*, that H., on the return of the note, had the right to strike out the endorsement he had written over the payee's signature, and fill up the endorsement to himself, and that the endorsement to the bank for collection did not destroy the negotiable quality of the note: *Id.*

Where the payee of a note put the same into the hands of another, endorsed in blank, in which condition it came into the hands of H., who filled up the endorsement, directing its payment to a bank for his use,

and the same was returned uncollected, endorsed in blank by the bank, "without recourse," and H. afterwards sold and delivered the note to another, who had no actual notice of any interest the payee had in the same, it was *held*, that the character of the endorsement written by H. over the payee's signature, afforded no notice to the purchaser from H. of the payee's interest in the note, and that the purchaser was entitled to be protected, as an innocent holder: *Id.*

An endorsement of a note over the signature of the payee to a bank for collection, for account of H., is an endorsement for the benefit of H. and not for that of the payee, and such an endorsement does not destroy the negotiability of the note; but any stranger taking an endorsement from the bank would hold the same for the use of H., the same as the bank; *Id.*

Constitutional Law.

Appeal to Supreme Court of United States—Construction of Contract—When not a Federal Question.—Upon a *quo warranto* to exclude parties from the use of the franchises of a lottery granted for a limited period, the only question raised was, whether the period had expired or whether the time had been extended by the interruption of the use, by judicial proceedings against the lottery. The state court decided that the period had expired. *Held*, that as the validity of the grant had not been disputed and no law impairing it had been construed, no federal question had been raised and the appeal was dismissed: *France* v. *State of Missouri*, S. C. U. S., Oct. Term 1880.

Contempt. See *Errors and Appeals.*

Contract. See *Sunday.*

Public Policy.—The plaintiffs procured the conveyance to the defendant of certain lots in the city of Des Moines, upon consideration of a promise by defendant that it would build thereon passenger and freight depots, which should be the only ones built or maintained by it in said city. Defendant built and has since maintained both passenger and freight depots thereon; but having also built a depot in another part of the city, an action was brought by plaintiffs to recover, as damages, the value of the lots conveyed. *Held*, that such action was based upon the contract, which was illegal and void as against public policy, and the parties being in *pari delicto*, the action could not be maintained: *Williamson* v. *C., R. I. and P. Railroad Co.*, 53 Iowa.

Corporation.

Failure to become Incorporate—Liability of Associates among themselves for Debts of Association.—The managers of an association, supposed by its members to have been duly incorporated, in pursuance of authority given by their associates, made expenditures and incurred liabilities on behalf of the supposed corporation. It turned out, however, that owing to failure to file the requisite certificate with the secretary of state, the association had never become a corporation, in consequence of which the managing members became personally bound and did pay all the debts. *Held*, that their associates were bound to share the loss with them, each in proportion to the stock subscribed by him, and the

fact that any subscriber had paid up his subscription in full, or had paid the double liability to which stockholders in corporations were at one time subject, did not exempt him from liability for further contribution, but he was entitled, upon an accounting, to be allowed for such payments: *Richardson* v. *Pitts*, 71 Mo.

COURTS.

Jurisdiction—Federal Courts—Sale of Land without Redemption.—An action cannot be maintained in the state courts to set aside a sale of lands made in pursuance of a decree of a federal court having jurisdiction, though the decree authorizes a sale without providing for redemption in accordance with the statutes of the state; such decree is erroneous, merely, and not void, and can only be attacked by direct proceedings in the same case: *Moore et al.* v. *Jeffers*, 53 Iowa.

CRIMINAL LAW.

Insanity as a Defence—Burden of Proof—Quantum of Proof.—The burden of proving insanity as a defence to a charge of crime, rests upon the defendant. To make out the defence it is necessary to produce evidence which will reasonably satisfy the jury of the fact. HENRY, J., dissenting as to the *quantum* of evidence; *The State* v. *Redemeier*, 71 Mo.

DAMAGES.

Injury to Mortgaged Premises—Action by Mortgagee.—In an action by a mortgagee for injury to the mortgaged premises, the measure of damages is not the depreciation in the market value of the premises, but the diminution in the value of the security: *Schalk* v. *Kingsley*, 13 Vroom.

Where there are several mortgagees, each may, without reference to the other, recover such damages as he can show he has sustained: *Id.*

DEED. See *Evidence.*

EQUITY.

Specific Performance—Fraudulent Agreement.—A court of equity will not decree the specific performance of an agreement to convey land, made for the purpose of hindering or delaying creditors, when both parties participated in the fraudulent intent. In such case, a court of equity will not assist either party, but will leave them in the position they have placed themselves: *Ryan* v. *Ryan*, 97 Ills.

ERRORS AND APPEALS. See *Constitutional Law.*

Fine for Contempt in disobeying Injunction—Not reviewable on Writ of Error.—A defendant in an equity suit was fined upon proceedings against him for contempt in disobeying an interlocutory injunction. To the order imposing the fine he sued out a writ of error. *Held*: 1. That if the order was part of the original suit it was interlocutory, and could only be corrected upon appeal after final decree; and, 2. That if the proceeding for contempt was independent of the original suit, it could not be re-examined either on writ of error or appeal: *Hayes* v. *Fischer*, S. C. U. S., Oct. Term 1880.

Charge of the Court—Refusal of several Propositions presented as a whole—When not erroneous.—Where the bill of exceptions shows that the court below was asked to give a charge, consisting of a number of propositions which were presented and refused as a whole, the Appellate Court will not reverse if either of the propositions was erroneous: *United States* v. *Hough*, S. C. U. S., Oct. Term 1880.

ESTOPPEL.

To set up a Contract different from that represented.—After a person had entered upon the service of an insurance company, the management of the company was changed—new officers being appointed in place of the former ones. The new management made inquiry of the employee mentioned as to what were his relations with the company. In response he stated certain terms and conditions as those embraced in the contract of his employment. Subsequently, upon being discharged from the employment of the company, the agent sought to recover his salary under an alleged contract different from that which he had stated when the inquiry was made of him. It was *held*, the plaintiff was not estopped to rely upon a contract, different from that which he had disclosed to the officers of the company; the stating of a contract different from that upon which he sought to recover was but evidence against it: *Alliance Ins. Co.* v. *McKnight*, 97 Ills.

EVIDENCE.

Deed—Defective Acknowledgment as to one Grantor—Admissibility as to the other,—Where a deed is made by two grantors, and the certificate of acknowledgment as to one of them states that he is personally known to the officer, but this statement is omitted in the certificate as to the other, the deed is admissible in evidence: *Peoples' Bank of Belleville* v. *Winslow*, S. C. U. S., Oct. Term 1880.

Judicial Notice of Signature of Public Officer.—Proof of the execution of official instruments is not always necessary. As a general rule courts take judicial notice of the public officers, and in some cases their signatures, within their respective jurisdictions, and when the trial court in such cases acts upon such judicial notice, this court will presume, in the absence of any other evidence to the contrary, that it acted properly: *Walcott* v. *Gibbs*, 97 Ills.

FERRYMAN.

Liability for safety of Passenger's Goods.—A ferryman is not chargeable for the absolute safety of property retained by a passenger in his own custody and under his own control: *Dudley* v. *Camden and Philadelphia Ferry Co.*, 13 Vroom.

The property, in such cases, is not at the sole risk of either party. The ferryman undertakes for its safety, as against any defects in his boat, or the want of proper appliances for its security, as well as for the skill and care of himself and his servants. The passenger is bound to exercise ordinary care and skill in its management; and if he is guilty of negligence contributory to the injury, he cannot recover: *Id.*

Where the ferryman carries the property gratuitously, he is liable only for gross negligence: *Id.*

FRAUD. See *Equity*.

HUSBAND AND WIFE.

Sale of Chattels by Husband to Wife—Delivery.—A sale of chattels made by a husband to his wife, unaccompanied by a delivery, cannot be enforced in an action at law by force of the statutes of this state relative to married women: *Woodruff* v. *Apgar*, 13 Vroom.

Goods sold by a husband to his wife, but not delivered to her, were seized under execution by the creditors of the husband. *Held*, that replevin for such goods would not lie in favor of the wife: *Id.*

INFANT. See *Negligence; Vendor and Vendee.*

Suit on—Joint Contracts.—In a suit on a joint contract made by an infant and an adult as joint parties, and under which money has been earned, the infant's father cannot sue with the other contractor in his own name as the infant's substitute: *Osburn and Jenkinson* v. *Farr*, 42 Mich.

An infant's partnership contract is not void, and in a suit under it upon a completed cause of action for the infant's benefit, he should be a plaintiff in his own name and not through another: *Id.*

INJUNCTION.

Irreparable Damage.—A petition which shows that defendants are about to open a road through plaintiff's premises, and for that purpose are about to cut plaintiff's timber and hedges and remove his fences, thereby exposing his crops and fruit trees, and his meadow and pasture lands to the depredations of stock, states a good cause for injunction. It is not necessary to aver and prove in addition that the defendants are insolvent. Such injuries would be irreparable in a legal sense: *McPike* v. *West*, 71 Mo.

INSURANCE.

Construction of Policy—Description.—A policy of insurance was issued by defendant upon certain goods "contained in the one-story frame building situated on the north side of the public square," &c. The owners removed the goods during the continuance of the policy to another building, which answered the same description as given in the policy, where they were destroyed. *Held*, that the building was sufficiently identified in the policy, and the removal of the goods, without the consent of the defendant, was a violation of the contract of insurance which rendered the policy void: *Harris & Cole Bros.* v. *Royal Canadian Ins. Co.*, 53 Iowa.

The policy contained the provision that in case of loss the holders should state under oath in making proof, that the property was contained in the building or premises described in the policy. The plaintiffs not having made such statement in their proofs, it was held that such fact would defeat a recovery: *Id.*

The fact that the defendant received the premium for the whole time would not authorize a recovery by the plaintiffs, the policy being forfeited entirely by their own unauthorized acts: *Id.*

JUDGMENT. See *Attorney.*

Landlord and Tenant.

Implied Acceptance of Terms of Tenancy.—Where a landlord sends his tenant already in possession a written permit to remain for two years longer, free of charge, and the tenant receives the same, and remains without notice to the landlord that he declines the terms offered, he will be deemed to have accepted them, and upon the expiration of the term may be dispossessed without notice to quit: *Hulett* v. *Nugent*, 71 Mo.

Growing Crops—Rent.—A creditor of a tenant, who is cultivating land upon shares, cannot by a levy of an attachment upon the growing crop of the tenant deprive the landlord of his interest therein when mature: *Atkins* v. *Womeldorf*, 53 Iowa.

In an action of replevin by a landlord to recover corn levied upon as the property of his tenant, where the lease provided that it should terminate upon failure of the tenant to fulfil its conditions, and there was evidence tending to show that the tenant had left the farm, which was in possession of the landlord, it was held that the question as to whether the tenant had abandoned the farm, or was only absent temporarily, should have been submitted to the jury: *Id.*

Lease.

Of Personal Property.—A "sewing-machine lease" gave the privilege of purchasing the machine by paying the full amount of the rent at any time during the continuance of the lease, but reserved to the lessor all property in the machine, and the right to control it until the purchase-money was paid in full, and also gave him the right to seize it on default in payment. *Held*, that the title continued in the lessor, and that as matter of law he had a right to dispossess the lessee in case of default: *Smith* v. *Lozo*, 42 Mich.

Mandamus. See *United States Courts.*

Master and Servant.

Personal Injury through Incompetency of Fellow-servant—Burden of Proof.—Proof that a servant was incompetent does not impose upon his master, when sued for injuries occurring to a fellow servant through such incompetency, the burden of proving that the master used ordinary care and prudence in the selection of the servant: *Murphy* v. *St. Louis and Iron Mountain Railroad Co.*, 71 Mo.

Mortgage. See *Damages.*

Municipal Bonds. See *United States Courts.*

Suit upon Coupons—Authority to issue—Not created by implication—Authority to incur Liability and method of Discharge provided by same Statute—Exclusiveness of such method—In a suit upon coupons of bonds, issued by a county in aid of a railroad, the controlling question is whether there was authority in law for issuing the bonds. If there was not, no recovery can be had: *Wells* v. *Board of Supervisors of Pontotoc Co.*, S. C. U. S., Oct. Term 1880.

Unless the power to issue bonds, for the payment of municipal subscriptions to the stock of a railroad, is given in express terms, or by reasonable implication, no obligation of that kind can be created: *Id*

Where a statute confers extraordinary power upon the governing body of a county, authorizing them to create a new liability, and providing a special way for the discharge of that liability, the mode of discharge prescribed is exclusive of all others: *Id.*

Lynde v. *Winnebago Co.*, 16 Wall. 6, distinguished: *Id.*

Authorization to issue—Purchasers relying on Authority set out in the Bonds.—Where a municipality has contracted a debt incurred in the laying out and improvement of its streets without legal authority, it is competent for the legislature to authorize it to issue bonds in payment thereof: *Mutual Benefit Life Ins. Co.* v. *City of Elizabeth*, 13 Vroom.

A bond given by a city containing a general obligation to pay cannot, except upon the plainest grounds of construction, be converted into a promise to pay out of a particular fund: *Id.*

When a municipal council is authorized to issue bonds when certain facts exist, and such facts are exclusively within the knowledge of such council, it is to be inferred that the law-makers intended to make such council the judge whether such condition precedent has been fulfilled, and a purchaser can rely securely on the statements to that effect contained in the bonds: *Id.*

Municipal Corporation.

Ordinance in Excess of Power.—An ordinance passed by a municipal corporation, which imposes a greater penalty for its violation than is authorized by the charter, is void: *State, Leland, Prosecutor*, v. *Long Branch Commissioners*, 13 Vroom.

Name.

Initials—Idem Sonans.—Initials cannot be used for the Christian names of parties to actions, except in cases of parties described by initial letters in bills of exchange, promissory notes or other written instruments, under sect. 28 of the Practice Act: *State, Elberson, Prosecutrix*, v. *Richards*, 13 Vroom.

A party whose real name was Rebecca Elberson, and who was the wife of J. W. Elberson, was described in the writ as Mrs J. W. Elbertson: *Held*, that the names Elberson and Elbertson, being *idem sonans*, that variance was immaterial, but that *Mrs. J. W.* was not a valid description of her Christian name: *Id.*

Negligence. See *Master and Servant.*

Insufficient Evidence of.—In an action against a street railway company to recover damages for the killing of plaintiff's child by defendant's car, the facts appeared, by the testimony of plaintiff's witness, to be as follows: The car was moving at a moderate rate of speed on a slightly down grade, and witness was standing beside the driver, when he heard the driver shout, "Look out," "Hold on," or "Stop." Turning, he saw plaintiff's child (a boy three years old) about six feet ahead of the car mules and four feet from the track, and running toward the track. The driver, with his right hand on the brakes and his left pulling on the lines with such force that the tongue went up over the heads of the mules, was doing his best to stop the car. The child ran to the middle of the track, where he was overtaken and crushed by the car. The whole transaction seemed to the witness to have occurred "in a

moment." There was no positive proof that the driver saw the boy at all before he hallooed: *Held*, that on this state of facts the plaintiff was not entitled to recover: *Maschek* v. *St. Louis Railroad Co.*, 71 Mo.

NOTICE. See *Possession.*

PARTNERSHIP.

What constitutes.—Where two persons bought a threshing-machine and gave their joint note therefor, under an agreement that it was to be used in doing custom work, in the profits and losses of which they were to share equally, it was held that they were partners in the purchase: *Aultman* v. *Fuller*, 53 Iowa.

Where a separate creditor of a partner levied upon and sold partnership property, without bringing an action to determine the partner's interest therein, as provided by sect. 3054 of the Code, it was *held*, that such sale was invalid as against a creditor of the firm who afterward levied upon the same property: *Id.*

POSSESSION.

Notice of Ownership by Possession.—The possession of land by a person at the time of his death is *primâ facie* evidence of ownership at that time, and a subsequent purchaser of the legal title will be conclusively presumed to know that whatever rights such deceased person had in the land, not disposed of by will, and of an inheritable character, devolved on his heirs, and his possession being constructive notice of his rights at the time of his death, it becomes the duty of such purchaser to inquire of his heirs and ascertain the extent of their interests: *Mc Vey* v. *Mc Quality et al.*, 97 Ills.

RAILROAD. See *Negligence.*

SALE.

Executory Contract—Decision of Third Party as to Quality of Goods.—In the absence of fraud, the decision of one, agreed upon between the parties to an executory contract of sale, to determine whether the goods offered conform to the requirements of the contract, is binding: *Nofsinger* v. *Ring*, 71 Mo.

Between Members of the same Family—Change of Possession.—The evidence necessary to show a change in the possession of property transferred by an uncle to his nephews, living together on the same premises would be different from that otherwise needed; and where there is uncertainty, it is for the jury to determine from the evidence whether the change was effected: *McLaughlin* v. *Lange*, 42 Mich.

Transfer of Title—Delivery.—A quantity of barrels were sold from a large stock stored in the warehouse of a bailee, who was accustomed to deliver to purchasers upon presentation of a bill of sale. He was notified of the sale by both parties, and at the request of the purchaser, to whom a bill of sale had been given, he undertook to keep the barrels safely until called for. But they were not designated nor separated from the rest, which were of the same size and quality. *Held*, that there was sufficient delivery to pass title and protect the barrels sold from an execution levy against the vendors, upon the general stock: *Carpenter* v. *Graham*, 42 Mich.

A purchaser's delay, in removing merchandise from the charge of a bailee in a reasonable time after constructive delivery, cannot subject the vendor to the risks of storage: *Id.*

Acts of Control by Purchaser—Delivery.—A mining company agreed to sell two thousand tons of ore to an iron company and deliver it at a certain point, whence it was taken by rail to the consignees. The contract quantity was delivered, and with more ore of the same kind, was deposited in a pile at the point of delivery; but the consignees directed the railroad company to cease forwarding it for a time, as they had no room for it. They paid in full for the contract quantity, however, but as they did not finally receive the full amount, they sued the railroad company for the amount which it had failed to deliver. *Held*, 1, that by these acts the iron company asserted their understanding that when the ore was delivered in the pile it was under their control, and, 2, that they could not sue the mining company for the deficiency: *Iron Cliffs Co.* v. *Buhl*, 42 Mich.

Where ore is piled at the point of delivery in a mass larger than was contracted for, and nothing remains but to take the contract quantity from the pile, *it seems*, that it is a sufficient delivery: *Id.*

SPECIFIC PERFORMANCE. See *Equity.*

SUNDAY.

Contracts or Payments on Sunday.—Where a land contract was delivered on a week day, the mere fact that it was dated as if made on Sunday is not material and will not avoid it: *Lamore* v. *Frisbie et al.*, 42 Mich.

Payments made on Sunday and not returned, but allowed on a final accounting, will not avoid the contract on which they were received as one made in violation of the Sunday laws: *Id.*

SURETY.

Securities taken by Surety.—It is well settled that securities taken by sureties for their indemhity, inure to the benefit of the creditor, and he may resort to them for satisfaction of his debt: *Thornton* v. *National Exchange Bank*, 71 Mo.

TOR

Liability for Ratification of Trespass.—One cannot be liable as for the ratification of a tort that was not committed in his interest; so *held* where suit was brought against the general agent of a sewing-machine company, for a forcible trespass committed by employees while removing a machine, by his direction and in compliance with the orders of the company, from the premises of one who held it under a sewing-machine lease which had been forfeited: *Smith* v. *Lozo*, 42 Mich.

UNITED STATES COURTS.

Suit on County Bonds—Jurisdiction not ousted by Existence of another Remedy under State Laws—Mandamus.—In the federal courts a writ of mandamus can only be granted in aid of an existing jurisdiction, and when desired to compel the payment, by a county, of coupon bonds, a judgment at law on the coupons is first necessary. A suit on

the coupons is therefore part of the necessary machinery which those courts use in enforcing the claim, and their jurisdiction is not ousted simply because, by the laws of the state, a remedy on the coupons is afforded in another way which must be resorted to before suit in the state courts: *County of Greene* v. *Daniel*, S. C. U. S., Oct. Term 1880.

Vendor and Purchaser.

Equity—Vendor's Lien—Infancy.—The trustee in a deed of trust given to secure a debt, being about to sell the land for default of payment, the defendant R., who was at the time a minor, agreed with the creditor that if A. would buy at $300 or more, he would give his note for the balance of the note. A. bought at $300, and paid the purchase-money, which was applied upon the debt. R. then executed his note according to the agreement. Afterward, R. having become of age, A. sold and conveyed the land to him. R.'s note being unpaid, this action was brought to obtain a personal judgment against him, and to subject the land to its payment. *Held*, that it would not lie. The creditor was not entitled to a vendor's lien; for the land was fully paid for by A. Neither could the principle be applied, that infancy cannot be invoked as a defence so long as the party holds on to the fruit of the contract; for the note was not given for the land: *Maupin* v. *Grady*, 71 Mo.

Warehouseman.

Storage of Grain—Contract, whether of Sale or Bailment.—Where grain was delivered to a warehouseman, and a receipt taken which provided that the grain might be stored in a common mass with other grain of the same quality, it was held that the contract was one of bailment and not of sale, although the warehouseman was himself continually buying and adding grain on his own account to the common mass, and shipping away therefrom: *Sexton & Abbott* v. *Graham*, 53 Iowa.

Where grain is so stored in a warehouse, with the understanding that it may be mixed with other grain of like quality, it passes out of the control of the owners, so far as identity is concerned, and they become tenants in common of the entire amount in store of like quality and stored subject to the same conditions, though it may occupy a number of separate bins, their respective shares being in proportion to the several amounts stored by them, and such tenancy continues although the identity of the entire mass in store may be changed by continued additions and subtractions: *Id.*

Where a warehouseman wrongfully ships from grain of depositors stored in mass with his own an amount greater than that remaining in the warehouse, the amount so remaining will be considered as the property of depositors, it not being shown that it was all bought and stored by the warehouseman subsequent to such wrongful shipment: *Id.*

A warehouse receipt issued by a warehouseman upon his own grain as collateral security merely, and not intended to transfer the ownership is invalid under section 2171 of the Code: *Id.*

Where one to whom such invalid receipt was executed, demanded possession of the grain thereunder, whereupon the keys of the warehouse were delivered to him, it was held that there was no valid delivery of the grain to him as against a prior purchaser of an amount of grain from the warehouseman, who held a valid receipt therefor, although no evidence of his purchase was recorded: *Id.*